United Nations S/AC.37/2003/(1455)/21

Security Council

Distr.: General
17 April 2003

Original: English

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 17 April 2003 from the Permanent Mission of New Zealand to the United Nations addressed to the Committee

The Permanent Mission of New Zealand to the United Nations presents its compliments to the United Nations Security Council 1267 Committee and has the honour to present the report of New Zealand as required under United Nations Security Council resolution 1455 (2003) (see annex).

03-35095 (E) 020603

Annex to the note verbale dated 17 April 2003 from the Permanent Mission of New Zealand addressed to the Committee

Response of New Zealand to the Security Council Committee under Security Council resolution 1455 (2003)

New Zealand is fully committed to combating international terrorism in all its forms and to co-operating with the United Nations and its Member States in this pursuit. New Zealand is fully aware that the Taleban/Al Qaeda sanctions regime as administered by the UN Security Council Committee established pursuant to Resolution 1267 ('the 1267 Committee') constitutes a key instrument in the fight against terrorism and that cooperation among Member States, the 1267 Committee and the Monitoring Group is critical to the improved implementation of the sanction measures. New Zealand submits this report in response to paragraph six of UN Security Council Resolution 1455 and specifically in response to the questions set out in the related 'Guidance for reports' document.

I. Introduction

1. There has been no detected activity by Usama bin Laden, Al Qaeda or the Taleban and their associates in New Zealand to date. No specific threats or trends have been identified in this regard.

II. Consolidated list

2. New Zealand has two regimes that implement the various obligations contained in Security Council Resolutions 1267 (1999), 1333 (2000), and 1390 (2002). Both regimes apply to the individuals who, and groups or bodies which, appear on the list drawn up by the 1267 Committee.

The first regime comprises regulations made under the United Nations Act 1946, which is the usual means of giving effect in New Zealand to Security Council sanctions resolutions. When Resolution 1267 was adopted, New Zealand implemented the obligations in that resolution by promulgating the UN Sanctions (Afghanistan) Regulations 1999. These regulations were subsequently revoked and replaced with the UN Sanctions (Afghanistan) Regulations 2001, to give effect to the obligations in both Resolution 1267 and 1333. These regulations were in turn amended in 2002 to reflect requirements by UN Security Council Resolution 1390. The regulations, in their amended form, continue to apply certain sanctions on what are termed "specified entities", namely, the Taleban, Usama bin Laden, and Al Qaeda, together with associated individuals and groups that the 1267 Committee has designated.

The second regime is more general in nature and aimed primarily at implementing obligations in UN Security Council Resolution 1373, with a particular focus on the obligations relating to the financing of terrorism. To the extent that the financing obligations contained in the Afghanistan Resolutions overlap with those in Resolution 1373 they have been subsumed within this broader regime. Initially New Zealand gave

effect to Resolution 1373 by interim regulations also made under the United Nations Act (the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001). These regulations were replaced in October 2002 by the Terrorism Suppression Act 2002, which contains a more comprehensive regime aimed, in particular, at combating terrorist financing.

Under the Terrorism Suppression Act the Prime Minister, in consultation with certain other Ministers, may designate individuals, groups or bodies, as "terrorist entities" if certain statutory criteria are met. These essentially require some evidence of a link to a "terrorist act" (as defined). There is provision to make an "interim" designation in the first instance, which can be done quickly but lapses after 30 days unless a final designation has been made. A final designation requires a higher evidential threshold to be satisfied (i.e. "reasonable grounds to believe" that the entity has had a particular kind of involvement in one or more terrorist acts). If an entity appears on a UN Security Council list of terrorist entities that is "sufficient" evidence of involvement. (The Act makes it clear that the provision is intended to apply to the list that the 1267 Committee has established.)

Under transitional provisions contained in the Act, the individuals and groups to which the Afghanistan Regulations applied at the date the Act came into force are treated as if a final designation had been made in respect of each of them. This therefore covers all individuals and groups whose names appeared on the 1267 list as at 18 October 2002. Since then it has been necessary to make a separate designation in relation to each individual or group added to the 1267 Committee list. This is being done as required. When a designation is made, banks and other financial institutions are notified to ensure that they check their records promptly. There is also public notification. A designation is not permanent.

A final designation remains in force for three years but can be revoked within that period. At the end of three years the designation may be extended for a further three-year period. This requires the Attorney General to apply to the High Court, which must be satisfied, on the balance of probabilities that the statutory criteria apply. This would not be a difficult threshold to meet if the particular entity remained on a UN list and had continued its involvement in terrorism. Further extensions can be made for three-year periods if the necessary threshold continues to be met. Designation has a number of consequences for the entity. In particular, any assets discovered are frozen and can eventually be forfeited. This is discussed further below.

3. No problems have been identified.

4. No designated individuals or entities have been identified.

5. New Zealand has nothing to report in this regard.

6. Not applicable.

7. Not applicable.

8. The UN Sanctions (Afghanistan) Regulations 2001 include a number of provisions that are aimed at preventing various forms of support for Al Qaeda. In addition, as part of the measures to implement UN Security Council Resolution 1373, the Terrorism Suppression Act contains three new offences that are relevant in this context because Al Qaeda is a designated entity under the Act:

- It is an offence to recruit people to become members of terrorist groups, knowing that the group or organisation is a designated entity or an entity involved in the carrying out of terrorist acts.

- It is an offence to participate in a terrorist group, knowing that the group or organisation is a designated entity or an entity involved in the carrying out of terrorist acts and where the purpose of the participation is to enhance the ability of the entity to carry out terrorist acts.

- It is an offence to provide or collect funds, intending or knowing that they are to be used for financing terrorist acts (This is the offence required to be created under the International Convention for the Suppression of the Financing of Terrorism.)

These offences apply not only to conduct in New Zealand and but also outside New Zealand in specified circumstances, for example, if the alleged offender is a New Zealand citizen. All these offences are punishable by a maximum of 14 years imprisonment.

The Counter-Terrorism Bill currently before Parliament includes a number of additional measures aimed at strengthening New Zealand's ability to combat terrorism generally. Several new offences are to be created including an offence of harbouring or concealing terrorists. This will also be able to be used in relation to those appearing on the 1267 Committee List.

III. Financial and economic asset freeze

9. Firstly, the domestic legal basis to implement the asset freeze required by Resolution 1267 and Resolution 1290 is covered by significant changes New Zealand made to its domestic laws relating to the freezing of funds and other financial assets or economic resources of persons or groups believed to be involved in terrorism.

In October 2002 the New Zealand Parliament passed the Terrorism Suppression Act. As noted above in question two, the Act not only implements measures in UN Security Council Resolution 1373 but also incorporates the financing aspects of the three Afghanistan resolutions. The Act replaced the interim regime contained in the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001. These regulations (and their predecessors) had included standard provisions relating to the freezing of assets of "specified entities" (i.e. those named in the List issued by the 1267 Committee). However, a review of the obligations in UN Security Council Resolution 1373 suggested that a more comprehensive regime was needed. The key features of the new regime are as follows:

- The freezing and forfeiture regime in the Act is premised on an individual or group first being designated in accordance with the statutory procedure described in question 2. (The entity to be designated may, but does not have to, appear on a UN list.)

- A financial institution that, or other person who, suspects on reasonable grounds that property in their possession is or may be owned or controlled, directly or indirectly, by a designated entity, or is derived or generated from such property, must report the suspicion to the Police as soon as practicable. Failure to do so is an offence.

- The effect of designation is to freeze the assets of the entity because it is an offence knowingly to deal with property owned or controlled by designated entities or to make property or financial or related services available to such an entity. These offences carry a maximum penalty of 7 years imprisonment.

- These is provision to exempt certain dealings, for example, to give effect to the exceptions for humanitarian and extraordinary expenses contemplated in Resolution 1452)

- These is provision to exempt certain dealings, for example, to give effect to the exceptions for humanitarian and extraordinary expenses contemplated in Resolution 1452)

- If property is frozen the Prime Minister can direct that the property be passed across to the Official Assignee who is responsible for its management pending eventual forfeiture. (The Official Assignee has a similar role where suspected proceeds of crime are frozen under the Proceeds of Crime Act 1991.)

- There are safeguards for the interests of innocent third parties.

- Frozen property can eventually be forfeited but this first requires an order of the High Court.

No impediments have been identified in New Zealand's domestic law in this context as no financial assets, funds or economic resources of persons or groups believed to be involved in terrorism have yet been identified.

10. New Zealand Police is the lead government agency in New Zealand's response to countering terrorism domestically. Within New Zealand Police, structures have been established to provide for intelligence and investigative functions relating to terrorism. These are complemented with a broader cross sector response to UN resolutions relating to counter terrorism.

11. Financial institutions in New Zealand are required to adhere to "know your customers" principles in accordance with the provisions of the Financial Transactions Reporting Act 1996. Accordingly, where associations maintain bank or other accounts the flow of funds in and out of these accounts will be subject to ongoing due diligence scrutiny by the relevant New Zealand institution. Moreover, scrutiny of these types of accounts is likely to be relatively stringent because of the nature of associations and the ordinary banking risks that they pose. These risks exist because the accounts are operated with multi-signatories, who are acting on behalf of an organisation that normally does not have significant assets and where the financial institution must be assured about the legitimate authority of those issuing payment instructions on the account.

Accordingly, payments into the accounts not related to the usual activities of an association of that type, (i.e. transfers overseas or large scale cash withdrawals) are likely to be construed as out of the ordinary and therefore potentially suspicious. Financial institutions have a current obligation under the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 to report to the New Zealand Police anyone they suspect may be holding funds linked to designated terrorists.

More generally financial institutions are required under the Financial Transactions Reporting Act to report any transactions that they suspect as being linked to money laundering to the New Zealand Police. Therefore, the New Zealand financial system places reliance on "know your customer" principles to monitor account activity to ensure that funds in those accounts are not diverted to terrorist activities.

Charitable organizations diverting funds to terrorist activities would be caught by the regimes under both the existing regulations and the Terrorism Suppression Act.

12. No assets have been frozen to date.

13. Not applicable as no assets have been frozen.

14. Please refer to questions two above for the domestic legal basis in place to control the movements of funds or assets to designated individuals and entities.

Regarding the methodology for informing banks, when an entity is added to the 1267 Committee List, the New Zealand Police sends a written notification to all registered banks informing them of the names of those entities listed. The New Zealand Police also issues press releases and formal notification is set out in public governmental notice boards. The Terrorism Suppression Act sets out that reporting requirements extend to all financial institutions, and financial institutions are under general obligations to report suspicious financial transactions under Financial Transaction Reporting legislation. 'Financial institutions' are defined under Financial Transaction Reporting legislation to include non-bank financial institutions. Restrictions on the movement of commodities such as gold, diamonds and other related items are covered in the Terrorism Suppression Act in that they come under the definition of 'funds' and 'property'.

Alternate remittance practices such as or similar to "hawala" are currently subject to the Financial Transaction Reporting legislation as they come within the definition of a financial institution. However, New Zealand at this time does not require licensing or registration of such businesses.

IV. Travel ban

15. The prohibition on entry into or transit through the territories of UN Member States is given effect in New Zealand by the UN Sanctions (Afghanistan) Regulations 2001, as amended in 2002.

Regulation 12A prohibits the entry of persons designated by the UN Security Council 1267 Committee into New Zealand, or their transit through New Zealand, except in accordance with the exception contained in paragraph 2(b) of UN Security Council Resolution 1390. As a safeguard the regulation also provides that no permit or visa can be issued to allow entry unless the Secretary of Foreign Affairs and Trade advises that its issue would be consistent with New Zealand's obligations under the Resolution. Regulation 12A operates in addition to the requirements of the Immigration Act 1987, and any measures that may be taken in accordance with that Act to restrict entry to New Zealand.

16. Border alerts are activated in those cases where New Zealand Police have sufficient details to activate this process.

17. Border alerts are administered through the Police Interpol Office whenever a change to the terrorist entity designations is made.

18. No

19. A 'nationality flag' has been placed on the New Zealand Immigration Service's Application Management System (AMS). It alerts any officer processing in AMS to an application from any nationals from Angola, Sierra Leone, Liberia and Afghanistan and all applicants are referred to the Ministry of Foreign Affairs and Trade so they can check the name against the published list. Approval for nationals of these countries to enter or transit New Zealand will only be given on the advice of the Ministry of Foreign Affairs and Trade. Appropriate procedures are in place to facilitate this decision. In order to place an individual "alert" on AMS we require the person's surname, date of birth, sex, country of birth and nationality. The New Zealand Immigration Service would welcome any additional identifying information from the 1267 Committee on individuals on the List, to enable them to better implement the provisions of the sanctions. The New Zealand Immigration Service is not aware of any visa applicant to date whose name appears on the List.

V. Arms embargo

20. New Zealand is a member of the four main international export control regimes: the Wassenaar Arrangement (military and dual-use goods), the Australia Group (chemical and biological), the Nuclear Suppliers Group and the Missile Technology Control Regime. The controlled items under these regimes are adopted by New Zealand in the New Zealand Strategic Goods List (NZSGL). This is implemented under the Customs Export Prohibition Order 2002, promulgated under the Customs and Excise Act 1996. The NZSGL is updated annually to reflect agreed changes in the control regimes. The exports of goods that fall within the NZSGL are prohibited except with the consent of the Secretary of Foreign Affairs and Trade. The Ministry of Foreign Affairs and Trade refers to set criteria in deciding whether to grant consent. One of the criteria against granting permission is whether there is potential for the goods to be used in any terrorist activity.

21. The UN Sanctions (Afghanistan) Regulations 2001 as amended in 2002, contains a number of provisions that relate to the arms embargo:

- Regulation 4 prohibits the direct or indirect export of arms and related material from New Zealand to a "specified entity" (i.e. an entity designated by the 1267

Committee). This provision operat tes in addition to the existing procedure in the Customs Export Prohibition Order, r, which restricts certain exports. Regulations 5, 6 and 8 go on to give certain p owers in relation to exports prohibited under Regulation 4 ('prohibited exports'). For example, a Customs officer may detain any goods he or she suspects on rea asonable grounds to be prohibited exports.

- Regulation 7 prohibits the loading g of prohibited exports onto ships or aircraft. The obligation is placed on the ma aster of the ship or the pilot of the aircraft to prevent any such loading.

- Regulation 9 contains a general l prohibition on transactions by people in New Zealand, or by New Zealand citizens elsewhere, involving arms, where the person knows that the arms are int tended to be imported by a specified entity, or are to be supplied or delivered to, o or to the order of, a specified entity.

- Regulation 10 prohibits the ca arriage of arms to specified entities by New Zealand ships or aircraft and or those chartered to any New Zealand citizen or body incorporated in New Zeala and

- Regulation 12 contains a genera al prohibition on the provision of technical assistance or training to, or at the request of, any specified entity that relates to the provision, manufacture, mainte enance, or use of arms or related materiel.

A person who contravenes any of these r regulations commits a criminal offence and is liable accordingly. If any ship or aircraft i is used in contravention of regulation 10, there is potential, depending on the circumsta nces, to charge various people, including the owner, charterer, master of the ship, or the e pilot.

It is also possible that particular contraver entions of the arms embargo may amount to an offence under another statute, for instance e, one of the general offences contained in the Arms Act 1982 or the Crimes Act 1961.

22. New Zealand has a comprehens sive arms licensing regime. Only licensed individuals are able to purchase a firear rm. Stringent vetting processes relate to any application for an arms license.

23. Please refer to question 20 above e. The Ministry of Foreign Affairs and Trade also has the discretion to ask for an end-u user certificate from the exporter to ensure that the goods will not be diverted.

VI. Assistance and conclusion

24. New Zealand is currently working (along with other donors) to assist Pacific Island countries to implement effective law enforcement and border control legislation as the basis for the criminalisation of terrorist activities. New Zealand and Australia recently helped fund an Expert Working Group (February 2003 in Suva) to develop model counter terrorism legislation for the Pacific region.

25. No areas identified.

26. The passage of the Terrorism Suppression Act in October 2002 not only enabled New Zealand to implement key aspects of UN Security Council Resolution 1373 and, as noted above, the Afghanistan Resolutions, but also included the measures needed to give effect to the International Convention on the Suppression of Terrorist Bombings (1997) and the International Convention on the Suppression of the Financing of Terrorism (1999). New Zealand became a party to both conventions in November 2002 and is now party to 10 of the 12 international instruments on terrorism. As noted above, the Counter-Terrorism Bill includes a range of additional measures to combat terrorism. Included in the bill, which is expected to be passed later this year, are the provisions needed to implement the two remaining terrorism conventions: the Convention on the Physical Protection of Nuclear Material (1979) and the Convention on the Marking of Plastic Explosives for the purposes of Detection (1991).

Terrorism can also be seen as a form of transnational crime, which is a growing problem for all countries. In recognition that international initiatives are needed but can be effective only if they enjoy widespread support, New Zealand also passed legislation in 2002 to implement the UN Convention against Transnational Organised Crime and two of its protocols, on the Trafficking of Persons and Smuggling of Migrants. New Zealand was already in compliance with the obligations in the Convention relating to money laundering and the reporting of suspicious financing transactions but did need to make a small number of other amendments. These included the creation of the offences of people smuggling and participation in an organised criminal group. The legislation also made a number of changes to improve the effectiveness of laws relating to travel documents, including increasing the penalties for the use of fraudulent or forged documents. New Zealand ratified the Convention and two Protocols in July 2002.